WP(C) 4374/2007
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI
B E F O R E

THE HON'BLE MR.JUSTICE RANJAN GOGOI

Dates of hearing : 22.11.2007 and 23.11.2007.

Date of delivery of judgment : 23.11.2007.

JUDGMENT & ORDER (oral)

1. All these writ petitions having raised common questions of law on more o r less identical facts were taken up for consideration together and are being di sposed of by this common judgment and order.

2. The petitioners claim that pursuant to an advertisement issued by the re spondent authority in the month of January 2007 inviting applications for recrui tment of general duty constables in the CRPF (hereinafter referred to as the For ce), from candidates who are ordinary residents of Assam, Meghalaya and Arunacha l Pradesh, the petitioners had submitted their applications. Insofar as the Stat e of Assam is concerned with which the present writ petitions are concerned, 115 5 posts out of a total of 1254 posts were earmarked. According to the petitioner s, the selection was held on different dates in different centers if the State o f Assam in the month of March. In course of the said selection, apart from physi cal measurement of the candidates in respect of their weight, height, chest etc. they were made to undergo a physical efficiency test consisting of 25 marks fol lowed by a written test consisting of 50 marks and an interview for which 15 mar ks were earmarked. The remaining 10 marks were earmarked for special qualificati ons that a candidate may possess. The petitioners claim to have qualified in all segments of the selection process. Thereafter, according to the petitioners, a list of candidates who had qualified for the medical test was published and the petitioners had qualified to undergo the medical test held on different dates be tween 15th of May to 25th of 2007. The medical test being the last segment of th e recruitment process in which they claim to have also qualified, according to t he petitioners, they were awaiting appointments when to their surprise they foun d that candidates included in a second/waiting list to undergo the medical test were called for the said test. As the said fact created some misgivings in the m ind of the petitioners the writ petitions in question were filed.

3. The authorities of the Force who were impleaded as respondents in the wr it petitions have filed detailed affidavits in most of the cases which conform t o a common pattern. According to the respondents, in the very first step of the recruitment process i.e. in the physical measurement segment, the petitioners ha d not qualified being lower in height and chest measurement than what was stipul ated in the advertisement. However, as the candidates belonged to the State of A ssam and as the advertisement contemplated some relaxed standards in respect of height and chest measurement for such candidates, the petitioners were allowed t o take part in the different segments of the selection process with the stipulat ion that they should submit the requisite certificate which is in the form presc ribed by Annexure-III to the advertisement. The aforesaid requirement, according to the respondents, was intimated to the petitioners while they were undergoing the selection process. The respondents do not admit that at the conclusion of t he interviews any separate merit list was brought out showing the names of the c andidates who were eligible to undergo the medical tests. On the contrary, the r

espondents, in the affidavit filed, state and assert that the requisite certific ate in the form prescribed by Annexure-III to the advertisement was not submitte d by the petitioners. In the absence thereof the benefit of the relaxed standard s could not be given. The petitioners, therefore, were not eligible and qualifie d for appointment as they failed to conform to the requisite height and chest me asurement as spelt out in the advertisement. In such circumstances, in the final select list the names of the petitioners have not been included and they were n ot considered for appointment.

4. The pleadings of the parties being what has been noticed above, for an e ffective determination of the issues arising in the writ petition it may be appr opriate at this stage to quote hereunder the relevant clauses of the advertiseme nt in question :

7. ELIGIBILITY CONDITIONS

a) Age : 18 to 23 years (cut off date for age will be 1st August 2006)

b) Educational qualification: matriculation or 10th class pass from a recog nized Board/University.

c) Physical standard

Height : 170 Cms

Weight : Proportionate to height and weight as per medical standard.

Chest :- Un-expanded 80 cms Expanded 85 cms.

d) Medical standards :-

(i) Eye Sight : distant vision.

Minimum distant vision should be 6/6 and 6/9 of two eyes without corrections i.e . without wearing of glasses.

(ii) The candidates must not have knock knee, flat foot varicose vein or squi nt in eyes and they should possess high color vision, they must be in good menta l and bodily health and free from any physical defect likely to interfere with t he efficient performance of the duties.

e) Relaxation

i) Age: Upper age limit is relaxable for SC/ST by 5 years and OBC by 3 ye ars and for Ex-Servicemen in accordance with the Government orders on the subjec t.

ii) Height : Minimum height of candidates in the categories of Garwal is, Kumaonis, Gorkhas, Dogras, Marathas and candidates belonging to the States o f Sikkim, Nagaland, Arunachal Pradesh, Manipur, Tripura, Mizoram, Medhalaya, Ass am, Himachal Pradesh, Kashmir and Leh & Ladakh regions of J & K will be 165 cms. The minimum height for all candidates belonging to Scheduled Tribes will be 162 .5 cms.

iii) The minimum chest of candidates in the categories of Garhwalis, Kumaonis , Gorkhas, Dogras, Marathas and candidates belonging to the States of Sikkim, Na galand, Arunachal Pradesh, Manipur, Tripura, Mizoram, Medhalaya, Assam, Himachal Pradesh, Kashmir and Leh & Ladakh regions of J & K will be 78 cms. (minimum 5 c ms expansion). The minimum chest for all candidates belonging to Scheduled Tribe s will be 76 cms. (minimum 5 cms expansion).

14.(vi) Certificate of bonafide/ domicile/ permanent resident of that St ate from revenue authorities.

(vii) Hillman or Tribesman certificate, which should be on the format as prescribed in Annexure-III (if belonging to any of the category and desired t o avail relaxation in height as prescribed for such categories).

5. The aforesaid clauses of the advertisement in question clearly indicates that the normal requirement of height and chest is 170 Cms and 80 cms (non-expa nded) and 85 Cms. (expanded), respectively. However, under clause 7(e) certain c ategories of candidates including those belonging to the State of Assam would st and qualified if they have a height of 165 cms. and those belonging to the Sched

uled Tribes 162.5 cms. Similarly, such candidates are required to have unexpand ed chest of 78 cms. and 5 cms. more for expanded chest. Scheduled Tribe candidat es are required to have unexpanded chest measurement of 76 cms. and 5 cms. more for expanded chest measurement. Under clause 14(vi) a candidate is required to s ubmit a permanent residentship certificate of the State to which he belongs; whe reas under sub-clause (vii) 'Hillman' or 'Tribesman' certificate in Annexure-III is required to be submitted if a candidate belonging to any of the exempted ca tegories desire to avail of the relaxation of the physical measurement as stipul ated in the main part of the advertisement.

6. All the petitioners claim to be original inhabitants of the State of Ass am. Some of them are also Scheduled Tribe candidates. There is no dispute betwee n the parties on the aforesaid score. The records in original placed before the Court by Sri D. Baruah, learned Central Govt. Counsel, as perused by the Court, would indicate that though the petitioners do not meet the requirements of heigh t and chest as prescribed by the main part of clause 7 of the advertisement, the relaxed requirements stipulated in clause 7(e) of the advertisement are met by all the petitioners. The aforesaid position is also not disputed in the affidavi t filed by the respondents. Another significant fact that must be taken note of is that none of the petitioners had submitted the certificate in Annexure-III wh ich certificate is required to be submitted by a candidate claiming the benefit of the relaxed standards stipulated by clause 7(e) of the advertisement.

7. Notwithstanding the aforesaid fact i.e. non-submission of the requisite certificate in Annexure-III, all the writ petitioners were allowed to appear in the different segments of the selection process in the course of which the respo ndents claim that verbal notice was given to the petitioners to submit the requi site certificate in Annexure-III. It is the further case of the respondents that the petitioners were not selected and considered for appointment as the Annexur e-III certificate was not submitted by them to enable the authorities to give to the petitioners the benefit of the relaxed standards of height and chest measur ement. The respondents, significantly, do not dispute that apart from some of t he petitioners, details of whom are mentioned herein below, all the other petiti oners had qualified for selection and appointment on the basis of the marks secu red by them in the different segments of the selection process. In other words, the respondents admit that save and except the petitioners whose names and parti culars find mention below all the other petitioners were eligible for selection and for consideration for appointment had the Annexure-III document been submitt ed by them and on verification thereof they are found to be entitled to the rela xed standards stipulated by clause 7(e) of the advertisement.

The details of the petitioners who had not attained the requisite marks for being selected as evident from the records in original as compiled by the le arned Central Govt. Counsel are mentioned herein below:

1) Petitioner No.4 in WP(c) No.4068/07 - Md. Mantaj Ali.
2) Petitioner No.9 in WP(c) No.4068/07 - Sri Atikur Rahman,
3) Petitioner No.10 in WP(c) No.4068/07- Sri Abdul Malek Sarkar,
4) Petitioner No.11 in WP(c) No.4068/07- Sri Ikbal Hussain,
5) Petitioner No.21 in WP(c) No.4068/07- Sri Kartik Dewraja,
6) The only petitioner in WP(c) No.4421/07 - Sri Hasmat Ali.
7) Petitioner No.1 in WP(c) No.4335/07 - Sri Ranadip Boro.
8) Petitioner No.2 in WP(c) No.4335/07- Sri Surat Ch. Rabha.
9) Petitioner No.6 in WP(c) No.4436/07 - Sri Lachit Boro.
10) Petitioner No.5 in WP(c) No.4175/07- Sri Nabajyoti Das.
11) Petitioner No.2 in WP(c) No.4918/07- Md. Hafizur Rahman.
12) Petitioner No.2 in WP(c) No.4050/07- Sri Mintu Moni Deka.
13) Petitioner No.1 in WP(c) No.4136/07- Md. Maidul Islam.
14) Petitioner No.2 in WP(c) No.4358/07- Md. Rafikul Ahmed.

8. In the facts stated above the moot question that would confront the Cour t is whether the petitioners, having been allowed to appear in the selection wit

hout submitting the Annexure-III certificate, were required to be given requisit e notice by the respondents of their obligation to submit the said certificate a nd whether, in the facts of the present case, non-submission of the same by the petitioners would constitute a sufficient ground to exclude them from the select ion and consequential appointment process even though the petitioners had otherw ise qualified on merit.

9. Clause 14(vii) of the advertisement, on a plain reading thereof, appears to be somewhat inappropriately worded. A person who is an original resident of the State of Assam may not be a Hillman or a Tribesman. Yet such a person would be entitled to the benefit of relaxed standards of physical measurement in terms of clause 7(e) of the advertisement issued. However, clause 14(vii) had made th e benefit of such relaxed standards contingent on submission of the Annexure-III certificate by such a candidate. Sub-clause (vii) begins with the words Hillma n and Tribesman to which nomenclature a general category candidate belonging to the State of Assam may not be connected. A reasonable person reading sub-clause (vii) of clause 14 of the advertisement may after reading the opening words of the said sub-clause, discontinue further reading on the ground that it pertains to Hillman or Tribesman to which category he does not belong. In other words, on a plain reading of sub-clause (vii) there is room for an erroneous reading and/ or some confusion in the matter. None of the petitioners who are otherwise entit led to the benefit of the relaxed standards submitted the Annexure-III certifica te. In a situation where the petitioners being job seekers omitted to submit the said certificate and such omission was by a large number of candidates the Cour t will have to understand that such omission was not deliberate but may have bee n occasioned by the confusion in the language and the inappropriate wording of s ub-clause (vii) of clause 14. The respondents also appear to have understood suc h omission in the above manner, inasmuch as, though it was open for them not to allow the petitioners to take part in the selection process, such participation was permitted subject to the requirement of submitting the Annexure-III certific ate on a subsequent date. If Annexure-III document could be submitted by the pet itioners on a subsequent date the said fact should have been informed to them by means of a clear notice published. Instead, the respondents admit, in the affid avit filed, that such notice was verbal and that no written notice or newspaper notice was published. Intimation to eligible job seekers to fulfill a requiremen t stipulated by the advertisement on a subsequent date should have been by means of a written public notice to avoid all doubts and ambiguities in the matter. W hen legal rights of citizens flow from a requirement to comply with certain term s of an advertisement on a subsequent date the said fact must be brought to the notice of the concerned persons without any doubt in the matter. In the present case, the oral/verbal notice stated to have been conveyed by the respondents, ev en if such a notice can be contemplated in law, has been denied to have been rec eived by any of the petitioners. When a dispute on the giving of notice has aris en in the manner aforesaid, the Court would insist on proof of such notice being given by means of a public pronouncement or through the newspapers. Evidently a nd admittedly, in the present case, the same has not been done.

10. If the petitioners were not put to requisite notice of the requirement t o submit the Annexure-III certificate on or before a particular date, naturally, the Court will have to understand that their exclusion from the select list and the consequential appointments on the ground stated i.e. that the petitioners h ad not submitted the Annexure-III certificate would stand vitiated in law. This is particularly because the respondents themselves perceived the requirement of a notice to be given to the petitioners in spite of which an oral notice is stat ed to have been given. The respondents do not dispute that the petitioners excep t those named in paragraph 7 of the present order had qualified for selection an d appointment on merit i.e. the marks secured by them. The respondents also do n ot dispute that the petitioners meet the relaxed standards of height and chest i n terms of clause 7(e) of the advertisement and that the only reason for not giv ing the benefit of such relaxed standards to the petitioner is the absence of th

e Annexure-III certificate. Taking into account all the aforesaid facts the Court is of the view that the non-consideration of the cases of the petitioners for their eventual selection and consequential appointment, on the ground assigned, cannot have the approval of the Court.

11. The writ petitions, consequently, are allowed. The respondents will fix a date for submission of Annexure-III certificate by the petitioners and on the basis of such certificates as may be furnished by all or such of the petitioners their cases for selection and consequential appointment will be considered by the respondents on the basis of the measurements already recorded in the relevant columns of the forms submitted by each of the petitioners which forms constitute a part of the record placed before the Court. The directions contained in the present order shall, naturally, apply to only those petitioners who have secured the minimum cut off marks that has been worked out for each category of candidate i.e. General, S.C., S.T., OBC and will specifically exclude the petitioners, particulars of whom have been stated in paragraph No.7 of the present order. As the matter relates to appointment the respondents will be expected to act in the matter with utmost expedition and complete the process within an outer limit of four months from the date of receipt of a copy of this order.

12. All the writ petitions, consequently, are allowed to the extent indicated above.